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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,387	10/16/2003	Bryan McCarrick	66209-0001	9467

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EXAMINER

LAVINDER, JACK W

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/687,387

Applicant(s)

MCCARRICK, BRYAN

Examiner

Jack W. Lavinder

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2,4-9,15-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4-9, 11, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Callaghan in view of the non-patent literature "A Brief Catechism on the Brown Scapular (BCBS)."

Regarding claims 1, O'Callaghan discloses

- a necklace (two chains, 25)
- a pair of pendants (10, col. 2, lines 13-14), which are made out of a metal material (col. 1, line 44)
- a piece of cloth (19)
- a cavity, i.e., the cavity formed by the u-shaped cross section and rear surface (20) of the frame piece (11, figure 6) and a front surface (17, left numeral 17 in figure 7) of the pendant for receiving the cloth and exposing the cloth from within the cavity through the oval aperture (22) in the rear surface of the frame (20, figure 6)

O'Callaghan fails to disclose the piece of cloth being wool. However, it is notoriously old and well known to place a piece of wool in a religious scapular in remembrance of the monks of the Carmelite Order. The wool is to symbolize the scapular cloth (working

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clothing) that the monks use to wear as seen in the first paragraph on page 1 and last paragraph on page 2 of BCBS. Therefore, it would have been obvious to a person having ordinary skill in the art to place a piece of wool in the scapular of O'Callaghan as taught by BCBS to act as a reminder to the wearer of the Carmelite Monks in order to have a more meaningful religious effect on the wearer.

Regarding claims 15-17, O'Callaghan discloses an attachment mechanism/pin/hinge (12) for holding the front (17) and rear (20) surfaces together.

Regarding claim 18, the examiner takes official notice that the use of a latch on a locket pendant is old and well known to prevent the pendant from prematurely opening and the loss of the contents from the inside of the pendant. It would have been obvious to a person having ordinary skill in the art to add a latch to O'Callaghan's pendant to prevent the premature opening of the pendant and the subsequent loss of the cloth material from the inside of the pendant.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 19-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to disclose holding the front

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and rear faces of each of the first and second pendants together by one attachment mechanism.

### ***Response to Arguments***

5. Applicant's arguments filed 3/7/05 have been fully considered but they are not persuasive.

The applicant argues on page 5 of their remarks: "neither O'Callaghan nor BCBS, either alone or in combination, disclose a scapular having at least one of said front and rear faces exposing a piece of wool from within the cavity, as required by amended claims 1 and 6." O'Callaghan in view of the BCBS meets this limitation.

O'Callaghan discloses a pendant (10, 11), secured to a necklace at holes 23, having a front surface (14) and a rear surface (20, claim does not require that the front and rear surfaces are the outermost surfaces of the pendant). The rear surface (20) comprises an aperture (22), which exposes the piece of wool from within the cavity formed between the front surface (14) and the rear surface (20).

The applicant argues on page 6 of their remarks that there is no motivation to combine the teachings of BCBS with O'Callaghan's scapular because BCBS teaches either a brown cloth scapular or a medal scapular.

The examiner disagrees. The teaching being used from BCBS is directed to the use of wool for a scapular. Clearly, BCBS teaches that it is old and well known to use wool as a symbol of the Monks' clothes. O'Callaghan discloses using a piece of brown cloth, but fails to disclose the specifics of the material used to make the cloth. It would have been obvious to a person having ordinary skill in the art to replace the brown cloth

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with a piece of brown wool in order to make the scapular more authentic to the original brown wool scapular. This would create a more realistic copy of the original brown wool scapular, rather than just using a piece of brown cloth.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack W. Lavinder whose telephone number is 571-272-7119. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack W. Lavinder  
Primary Examiner  
Art Unit 3677

4/27/05